

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

MARY CALDWELL,

Plaintiff,

v.

**CAPT. LAWRENCE NODIFF, LT.
NICHOLAS BROWN, SGT. HENRY, TEN
(10) JANE and JOHN DOES, and CITY
OF PHILADELPHIA,**

Defendants.

CIVIL ACTION

NO. 13-162

ORDER

AND NOW, this 18th day of February, 2014, upon consideration of Defendants Lawrence Nodiff, Nicholas Brown, Sgt. Henry and the City Philadelphia's Partial Motion to Dismiss (Document No. 9, filed May 23, 2013), Plaintiff's Response to Defendants' Motion to Dismiss Plaintiff's First Amended Complaint (Document No. 11, filed June 7, 2013), and Defendants Lawrence Nodiff, Nicholas Brown, Sgt. Henry and the City Philadelphia's Reply Brief in Support of Their Motion to Dismiss (Document No. 12, filed June 10, 2013), for the reasons set forth in the Memorandum dated February 12, 2014, **IT IS ORDERED** that Defendants Lawrence Nodiff, Nicholas Brown, Sgt. Henry and the City Philadelphia's Partial Motion to Dismiss is **GRANTED IN PART AND DENIED IN PART** as follows:

1. That part of defendant's Motion seeking dismissal of plaintiff's reasonable-accommodation claims in Counts One and Two is **GRANTED** and plaintiff's reasonable-accommodation claims in Counts One and Two are **DISMISSED WITHOUT PREJUDICE** to plaintiff's right to file a second amended complaint if she is able to exhaust her administrative remedies with respect to these claims;

2. That part of defendant's motion seeking dismissal of plaintiff's claims under 42

U.S.C. § 1983 against the City in Count Three is **GRANTED** and plaintiff's claims under 42 U.S.C. § 1983 against the City in Count Three are **DISMISSED WITHOUT PREJUDICE** to plaintiff's right to file, within twenty (20) days, a second amended complaint if warranted by the facts and applicable law;

3. That part of defendant's motion seeking dismissal of plaintiff's claims under 42 U.S.C. § 1983 against Sgt. Henry and Jane and/or John Does in Count Three for failure to intervene is **GRANTED** and plaintiff's claims under 42 U.S.C. § 1983 against Sgt. Henry and Jane and/or John Does in Count Three for failure to intervene are **DISMISSED WITH PREJUDICE**.

4. Defendant's motion is **DENIED** in all other respects.

IT IS FURTHER ORDERED that a preliminary pretrial telephone conference will be scheduled in due course.

BY THE COURT:

/s/ Hon. Jan E. DuBois
DuBOIS, JAN E., J.